

Application No. 09/604,158
Attorney Docket No. 045112-0085

31. A composition for controlling house dust mites comprising, in admixture with an acceptable carrier, the compounds benzyl alcohol, phenyl ethyl propionate, and thymol, said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

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32. A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 31.

33. A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 13.

REMARKS

Claims 1, 7 and 11-13 and 16-33 are pending in the application. Claims 14 and 15 are cancelled without prejudice to, or disclaimer thereof, the subject matter they contain. Claims 1, 7 and 13 are amended and Claims 16 through 33 are added in an effort to encompass infringing subject matter. Applicants respectfully reserve the right to file continuation applications. No new matter is added into the application.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned, "Version With Markings To Show Changes Made."

The Rejections Under 35 U.S.C. §102(e)

Claims 1 and 11 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Bessette et al (U.S. Patent No. 6,183,767). Applicant respectfully traverses these rejections for at least the following reasons. The Office Action states:

Bessette et al. (US 6,183,767) disclosed blends of known acaricidal compounds such as benzyl alcohol and eugenol or cinnamic alcohol and eugenol admixed with inert carriers as a pesticide beneficial toward mites (Please see claim 4 for example).

Office Action at page 2.

Bessette et al. does not anticipate or disclose Applicant's invention as presently recited in the claims. At best, Bessette et al. discloses in relevant part three distinct compositions for controlling spider mites, which consist of (1) benzyl alcohol, phenyl ethyl alcohol, eugenol and

α -terpineol; (2) cinnamic alcohol, eugenol and α -terpineol; and (3) benzyl acetate, benzyl alcohol, phenyl ethyl alcohol, cinnamic alcohol and α -terpineol. Bessette et al. does not expressly and specifically disclose each and every feature of the specific pesticidal compositions presently recited. Further, Bessette et al. does not disclose Applicant's claimed composition(s) for controlling dust mites. Accordingly, reconsideration and withdrawal of the rejection under §102(e) is respectfully requested.

The Rejections Under 35 U.S.C. §102(b)

Claims 13 and 14 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Kubota et al. (JP 04091003-A). Applicant respectfully traverses these rejections for at least the following reasons. The Office Action states as follows.

Claims 13 and 14 are drawn to a pesticidal composition for the control of house dust mites comprising a plant essential oil such as eugenol admixed with a carrier. Claims are further drawn to specific oils such as eugenol and thymol for example.

Kubota et al. (JP 04091003-A) disclosed that eugenol was an effective dust mite (Acaridae) controlling agent (Abstract). Kubota et al. further taught that the eugenol could have been admixed with a carrier, and used as an emulsion, powder, dust, aerosol, fumigant or bait in order to treat areas of infestation (Abstract).

Office Action at page 3.

Kubota et al. does not anticipate the invention as presently recited in the claims. Applicant respectfully submits that Kubota et al. does not disclose each and every element of the claimed invention. Thus, the rejections under §102(b) should be reconsideration and withdrawn and such favorable action is respectfully requested.

The Rejections Under 35 U.S.C. §103(a)

Claims 1, 7 and 11-15 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Zocchi et al (U.S. Patent No. 6,080,792). Applicant respectfully traverses these rejections for at least the following reasons. The Office Action states as follows.

Zocchi et al. specifically taught that compounds such as methyl salicylate, benzyl acetate, benzyl alcohol, terpineol, carvone, amyl salicylate, terpinol, citronella and piperonyl butoxide were all known acaricidal agents (col.8, lines 42-53, col.4, lines 46-56, and Example 1, col.9). Acari are arachnids which include mites and ticks. This is confirmed from the disclosure of Zocchi et al. the

Application No. 09/604,158
Attorney Docket No. 045112-0085

patent which taught that 'acaricidal' meant the killing of dust mites (please see Abstract and col.9 line28- 'the acaricidal test for mites....').

It would have been obvious for one of ordinary skill in the art at the time the claimed invention was made to combine pipcronyl butoxide with an agent such as amyl salicylate or benzyl alcohol (i.e. Claims 7 and 15), or alternatively other known killing agents such as methyl salicylate and amyl salicylate (i.e. Claim 1) since each is well known in the art for their claimed purpose and for the following reasons. This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman*, 1943 C.D. 518. Applicants invention is predicated on an unexpected result, which typically involves synergism, an unpredictable phenomenon, highly dependent upon specific proportions and/or amounts of particular ingredients. Any mixture of the components embraced by the claims which does not exhibit an unexpected result is (e.g., synergism) is therefore obvious.

Accordingly, the instant claims, in the range of proportions where no unexpected results are observed, would have been obvious to one of ordinary skill having the above cited references before him.

Office Action at pages 3 and 4.

Applicant submits that Zocchi et al. does not teach, suggest, or provide any motivation the one of ordinary skill in the art at the time the invention was made to reach the specific pesticidal compositions of the claimed invention as recited in the claims. Thus Applicant respectfully requests reconsideration and withdrawal of this rejections.

CONCLUSION

If any issues remain outstanding or if an Examiner's amendment could be made to expedite prosecution, then Applicant respectfully invites the Examiner to contact the undersigned representative at the telephone number listed below.

Please grant any extensions of time deemed necessary for entry of this communication. Please charge any deficient fees, including Notice of Appeal fees, or credit any overpayment of fees, to Deposit Account No. 5000417.

Respectfully submitted,

McDermott, Will & Emery

Application No. 09/604,158
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document (including any paper referred to as being attached or enclosed) is being sent to the U.S. Patent and Trademark Office via facsimile transmission to (703) 308-4242 on the date indicated below, with a coversheet addressed to Assistant Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C., 20231.

Date: October 11, 2002

By: Kelli N. Watson
Kelli N. Watson, Registration No. 47,170

ATTACHMENT
Version With Markings To Show Changes Made

IN THE CLAIMS

Claims 14 and 15 are canceled without prejudice to, or disclaimer of, the subject matter they contain.

Claims 1, 7 and 13 are amended as follow.

1. [Twice Amended] A [pesticida] composition for the control of house dust mites comprising, in admixture with an acceptable carrier, at least two compounds selected from the group consisting of aldehyde C16 (pure), [α -terpineol,]amyl cinnamic aldehyde, [amyl salicylate,]anisic aldehyde, [benzyl alcohol,]benzyl acetate, cinnamaldehyde, cinnamic alcohol, carvacrol, carveol, citral, citronellal, [citronellol,]p-cymene, diethyl phthalate, dimethyl salicylate, dipropylene glycol, [eucalyptol (cineole)]eugenol, iso-eugenol, galaxolide, geraniol, guaiacol, ionone, menthol, methyl salicylate, methyl anthranilate, methyl ionone, [methyl salicylate,] α -phellandrene, pennyroyal oil, perillaldehyde, [1- or 2-phenyl ethyl alcohol,]1- or 2-phenyl ethyl propionate, piperonal, piperonyl acetate, piperonyl alcohol, D-pulegone, [terpinen-4-ol,]terpinyl acetate, 4-tert butylcyclohexyl acetate, thyme oil, thymol, [metabolites of]trans-anethole, and vanillin[, and ethyl vanillin], said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

7. [Twice Amended] A [pesticidal] composition for the control of house dust mites comprising, [piperonyl butoxide]in admixture with an acceptable carrier, piperonyl butoxide and at least one compound selected from the group consisting of aldehyde C16 (pure), [α -terpineol,]amyl cinnamic aldehyde, [amyl salicylate,]anisic aldehyde, [benzyl alcohol,]benzyl acetate, cinnamaldehyde, cinnamic alcohol, carvacrol, carveol, citral, citronellal, [citronellol,]p-cymene, diethyl phthalate, dimethyl salicylate, dipropylene glycol, [eucalyptol (cineole)]eugenol, iso-eugenol, galaxolide, geraniol, guaiacol, ionone, menthol, methyl salicylate, methyl anthranilate, methyl ionone, [methyl salicylate,] α -phellandrene, pennyroyal oil, perillaldehyde, [1- or 2-phenyl ethyl alcohol,]1- or 2-phenyl ethyl propionate, pipcronal, piperonyl acetate, piperonyl alcohol, D-pulegone, [terpinen-4-ol,]terpinyl acetate, 4-tert butylcyclohexyl acetate, thyme oil, thymol, [metabolites of]trans-anethole, and vanillin[, and ethyl vanillin.], said composition

having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

13. [Twice Amended] A [pesticidal] composition for the control of house dust mites comprising, in admixture with an acceptable carrier, at least one compound selected from the group consisting of aldehyde C16 (pure), [α -terpineol], amylic cinnamic aldehyde, [amylic salicylate], Janisic aldehyde, [benzyl alcohol], [benzyl acetate], cinnamaldehyde, cinnamic alcohol, carvacrol, carveol, citral, citronellal, [citronellol], [p-cymene], diethyl phthalate, dimethyl salicylate, dipropylene glycol, [eucalyptol (cineole)], eugenol, [iso-eugenol], galaxolide, geraniol, guaiacol, ionone, menthol, menthyl salicylate, methyl anthranilate, methyl ionone, [methyl salicylate], [α -phellandrene, pennyroyal oil, perillaldehyde, [1- or 2-phenyl ethyl alcohol], [1- or 2-phenyl ethyl propionate, piperonal, piperonyl acetate, piperonyl alcohol, D-pulegone, [terpinen-4-ol], terpinyl acetate, 4-tert butylcyclohexyl acetate, thyme oil, [thymol, metabolites of]trans-anethole, and vanillin[, and ethyl vanillin], said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

14. [CANCEL]

15. [CANCEL]

New Claims 16-33 are added as follow.

16. [NEW] A composition for controlling house dust mites comprising, in admixture with an acceptable carrier, the compounds α -terpineol, eugenol, cinnamic alcohol, benzyl acetate, phenyl ethyl alcohol and benzyl alcohol, said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

17. [NEW] A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 16.

18. [NEW] A composition for controlling house dust mites comprising, Microcel E, NaHCO₃, and CaCO₃, and the compounds benzyl alcohol, α -terpineol, phenyl ethyl alcohol,

phenyl ethyl propionate, eugenol, said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

19. [NEW] The composition of claim 18, comprising by weight: 8.3% benzyl alcohol, 6.9% α -terpineol, 6.9% phenyl ethyl alcohol, 10.3% phenyl ethyl propionate, 6.9% eugenol, 21.9% Microcel, 19.2% NaHCO₃ and 19.6% CaCO₃.

20. [NEW] The composition of claim 18, comprising by weight: 15.2% benzyl alcohol, 6.9% α -terpineol, 6.9% phenyl ethyl alcohol, 3.4% phenyl ethyl propionate, 6.9% eugenol, 21.9% Microcel E, 19.2% NaHCO₃ and 19.6% CaCO₃.

21. [NEW] A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 18.

22. [NEW] A composition for controlling house dust mites comprising Microcel E, NaHCO₃, and CaCO₃ and the compounds benzyl alcohol, α -terpineol, phenyl ethyl propionate, eugenol, said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

23. [NEW] The composition of claim 22, comprising by weight: 15.2% benzyl alcohol, 6.9% α -terpineol, 10.3% phenyl ethyl propionate, 6.9% eugenol, 21.9% Microcel E, 19.2% NaHCO₃ and 19.6% CaCO₃.

24. [NEW] The composition of claim 22, comprising by weight: 22% benzyl alcohol, 6.9% α -terpineol, 3.5% phenyl ethyl propionate, 6.9% eugenol, 21.9% Microcel E, 19.2% NaHCO₃ and 19.6% CaCO₃.

25. [NEW] A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 22.

26. [NEW] A composition comprising NaHCO₃, CaCO₃, diatomaceous earth, Hi Sil 233 and S-1080 and the compounds benzyl alcohol, phenethyl propionate, eugenol, said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

27. [NEW] The composition of claim 26, comprising by weight: 5.1% benzyl alcohol, 1.25% phenyl ethyl propionate, 2.5% eugenol, 22% NaHCO₃, 39.9% CaCO₃, 4.5% diatomaceous earth, 17.7% Hi Sil 233 and 5% S-1080.

28. [NEW] A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 26.

29. [NEW] A composition for controlling house dust mites comprising, in admixture with an acceptable carrier, piperonyl butoxide and the compounds benzyl alcohol, phenyl ethyl propionate, thymol, said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

30. [NEW] A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 29.

31. [NEW] A composition for controlling house dust mites comprising, in admixture with an acceptable carrier, the compounds benzyl alcohol, phenyl ethyl propionate, and thymol, said composition having a pesticidally effective amount of compounds selected on a basis of pesticidal control for dust mites.

32. [NEW] A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 31.

33. [NEW] A method for controlling house dust mites, which comprises applying to a locus where control is desired a pesticidally-effective amount of the composition of claim 13.